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The City Council of the City of Idaho Falls met in Special Council Meeting, Wednesday, August 29, 2012, in the Council Chambers located in the City Annex Building at 680 Park Avenue in Idaho Falls, Idaho at 7:30 p.m.

There were present:

Mayor Jared D. Fuhriman
Councilmember Michael Lehto
Councilmember Sharon D. Parry
Councilmember Ida Hardcastle
Councilmember Ken Taylor
Councilmember Tom Hally
Councilmember Karen Cornwell

Also present:

Dale Storer, City Attorney
Kathy Hampton, Deputy City Clerk
All Available Division Directors

Mayor Fuhriman requested Boy Scout John Johnson to lead those present in the Pledge of Allegiance.

Mayor Fuhriman made the following statement:

The purpose of this meeting is to address concerns that have recently been raised with respect to the validity of the annual Appropriation Ordinance adopted at last Thursday's City Council Meeting held on August 23, 2012. In particular, concerns have been expressed with respect to the propriety of discussion that occurred between three members of the City Council during a recess called after approximately two hours of public testimony. The tentative budget previously approved by the City Council proposed a three percent increase in the amount of tax dollars certified to Bonneville County. Such increase was initially supported by a majority of the Councilmembers during previous budget work sessions and public hearings. At the public hearing last Thursday, numerous people testified in opposition to the proposed increase. During the recess, I understand that two Councilmembers, Ken Taylor and Mike Lehto, privately shared perspectives during a discussion outside the Council Chambers. During the course of that discussion, they were later joined by Councilmember Ida Hardcastle, who also participated in that discussion. Following the reconvening of the meeting, Mr. Taylor expressed his belief that there was now a consensus among the members of the Council that the amount of tax dollars included in the budget should not be raised. Concerns have been raised by various citizens, as well as The Post Register, to the effect that the off-record discussion that occurred during the recess, violated the Idaho Open Meeting Act. With brief introduction, I first ask if there are any of the three Councilmembers involved who wish to make a statement or explanation or discussion, after Mr. Storer makes a statement.

The City Attorney, Dale Storer, made the following statement:

Thank you, Mayor. Let me first say that my days as an Iona shepherd are beginning to look more and more inviting. As you might be aware, I have been asked to examine the question of whether or not there was indeed a violation of the Idaho Open Meeting Act and, if so, with respect to what is the proper course of action to remedy that violation. As, I think, Mr. Taylor will explain here in a moment, I have had varying thoughts about that particular issue and, very frankly, have vacillated with respect to the legal conclusion that I might make. And, I would tell you that my thoughts have been changing even as late as an hour ago. I did offer an opinion to the Council earlier this afternoon, that there was no violation. After having thought that matter through further, I am inclined to change that conclusion for reasons which I will explain to you in a moment. What I did want to do is to walk both the Council and the members of the audience through the analysis so that you can see why the legal analysis is very, very difficult, and to some extent fraught with peril in terms of how it affects the validity of the Appropriation Ordinance under which we will be operating in the upcoming fiscal year. I don't take that analysis lightly because it goes to the heart of the validity of the Ordinance; therefore, it is an analysis that is very critical and which must be correctly decided. The heart of the issue goes to the definition of what is an open meeting; in particular, whether or not the meeting between the three of the Councilmembers involved constituted a public meeting as defined under the Open Meeting Act. The issue goes to the question of whether or not that meeting was or was not a public meeting. Under the statute, meeting is defined as the convening of a governing body. The question, then, from a legal perspective, is whether or not the convening, if you will, of the off-record discussion that occurred was or was not a meeting of a governing body. If it was, then there was a violation. On the other hand, if those three members did not comprise a governing, then there would accordingly be no violation. The issue that it really gets down to is whether or not, by virtue of that meeting, it was conducted under circumstances where there was a quorum of the City Council. Now, before I really get into that analysis, I want to preface my remarks by my perspective of these type of, I call them, off-record meetings. As I have made clear to the Council, I certainly do not recommend them regardless of whether there is or is not a violation. The reason that, from a good governance, if you will, perspective, is that these type of off-record meetings do not convey or create the possibility for speculation as to what was discussed, and I think breed and foster public distrust. That is not what I think this Council should be doing. I am not critical, with respect to what happened, in the sense that there was a deliberate intention to convene a meeting secretly. From what I gather, and I think the Councilmembers will shortly explain how it occurred, there was no preconceived intent to secretly meet or to arrive at a pro forma decision outside of a public meeting. I think it was somewhat of an innocent meeting where a discussion was had regarding how we could respond in an appropriate fashion to a very strong protest with respect to the proposed budget. So, I don't in any way ascribe any evil motives or deliberate intention to violate the Open Meeting by any of those involved. I think it was an innocent sort of thing that simply occurred in an effort to try to be responsive to the citizens who had testified at great length. Now, having said that, let me walk through what I think is the appropriate analysis and what I would recommend would be done under the circumstances here. What we are presented with is somewhat of a damned if you do and damned if you

don't (excuse the French) proposition. On the one hand, if there is an acknowledgement of a violation, the Open Meeting Act is rather clear, that violation results in the invalidity of any follow-on action. The dilemma that is created is that if there is invalidity, it would go to the heart of the validity of the Ordinance that was adopted. Therein creates very difficult questions on what is the proper procedure to correct that process. That is the difficulty that is created if, indeed, you have a violation. On the other hand, I am certainly not one to recommend or encourage the Councilmembers lightly admit to a violation if, in fact, there was no violation. Now we are not talking about something here that is deliberate or intentional. The Act does not require that there be a deliberate or intentional violation. Rather, we are talking about whether or not there was a convening of a governing body. The question that ultimately, as I look at it, gets down to is whether or not there was a Quorum present with respect to that off-record meeting. If there was a Quorum, then in my opinion, there was a violation of the Act. On the other hand, if there was no Quorum, then there is not. Unfortunately, there is no case law directly on point with respect to whether or not, under the circumstances here, there was a Quorum. As you look at what occurred here, there were discussions between three Councilmembers. Arguably, that is not a Quorum. It takes four Councilmembers to comprise a Quorum. And if you follow that analysis, then that would result in a conclusion that there was no violation. As I said earlier, there is no case law that addresses the question of whether or not three members meeting privately comprise a Quorum. It is clear, I believe, that under the Act, the Quorum requirement exists, even though it is not specifically mentioned here. It does define a governing body as members of a public agency consisting of two or more members, and then importantly, it says with the authority to make decisions for or recommendations to a public agency regarding any matter. In my opinion, that means Quorum. I have also reviewed an opinion of the Attorney General of the State of Idaho, who also concludes that it requires that there be a Quorum. So that much of the analysis is fairly straight forward, in order to have a meeting, there must be a Quorum present. Now, we have what is present here, somewhat unusual circumstances, in the sense that when the meeting was initially convened, there was a Quorum of the City Council present. And that Quorum requirement is necessary in order to allow the Council to meet and transact business. Now the question then, is whether or not by convening separately, we have a new Quorum requirement, or whether or not the initial Quorum that was had initially, would continue on. That is the issue that is not particularly clear. There is no case law on it, certainly not in the State of Idaho. And under the circumstances here, where there was no preconceived intent to convene a meeting, you get that issue of whether or not that type of side-bar, if I could call it that, results in a new Quorum requirement. The consequences of a violation of the Act are rather clear under the Open Meeting Act, that is any resulting action taken by the Council would be void. The Act also provides a means of curing that violation, and that cure is by acknowledging the violation and declaring an intent to rectify or redo, if I can use that word, the action in a duly called public meeting. The question that arises once again, that is difficult from a legal perspective is whether or not it is necessary to redo the hearing process. In other words, assuming for the sake of argument that there was a violation, does that invalidate the public

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hearing. The public hearing went forth for well over two hours. It was properly noticed, and I think everyone was given an opportunity to respond to the proposal. My opinion is that if there was a violation of the Open Meeting Act that that would not invalidate the hearing. It was conducted properly and everyone had an opportunity. So, that question is, once again, not addressed by the Supreme Court and until it is, someone might raise that issue as well. I think it is clear that, assuming there was a violation, that the hearing process would not be invalidated. What would be invalidated is the Appropriation Ordinance adopted following the side-bar or off-record discussion. After having considered the matter, and once again as I would certainly acknowledge, I have vacillated on this particular issue, the conclusion that I would reach is that the Quorum requirement did continue during the side-bar discussion, meaning that even though there was an unintentional discussion or not an intentional violation of the Act, nevertheless, that Quorum that was initially had would continue during that discussion and that would then result in a violation of the Open Meeting Act. My recommendation, given that, would be to effectuate the cure provisions under the Act and declare an intent to cure, if you will, the subsequent Ordinance, by re-passing the Ordinance in the form that it was originally intended. I would add there is an additional benefit of doing that, and that is another reason that drives me to the conclusion in my recommendation to the Council. At the time the proposed budget was passed, the proposal was to include a 3% increase in the amount of tax moneys that were included within the budget. After hearing the discussion by many members of the public, the conclusion was to back away from that tax increase, if you will, and in lieu thereof, make up the deficiency with reserves or through subsequent budget cuts. In effect, there was a verbal amendment of the proposed Ordinance on the floor. We did not, because of that verbal amendment, we did not have a written version of the Ordinance at that time. Subsequent to that meeting, we have prepared an Ordinance to that effect. We do have that. It has been distributed to the Council to that effect. What I am suggesting that if the Ordinance is re-passed at tonight's Council Meeting, we will lend certainty to exactly what that Ordinance is. In summary, what my recommendation is, is that the Council as a whole, acknowledge that there was a violation that occurred as a result of the meeting by the three individual members involved, and that we move forward with a passage of the proposed Ordinance as it was explained by Mr. Taylor, and in the form that we have now disseminated and distributed to the Council that would be the same as what Mr. Taylor originally recommended and what the Council passed. But as I noted earlier, I think that the meeting draws into question what was done earlier and it would be my recommendation that the Council re-pass that Ordinance as a means of curing the Open Meeting violation. Having said that, certainly the Council needs to consider and weigh my recommendation. It is they who need to make the ultimate decision. I think it would be appropriate if we provided each of the three individuals involved with an opportunity to explain how that side-bar discussion occurred. As I suggested, everything that I have seen would suggest that there was no preconceived intent to meet in secret or to arrive at a pro forma preconceived decision. I think it was, from what I gather, a discussion of what the appropriate process was to change the tentative budget. My belief is that discussion could have occurred on the Council floor,

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should have occurred, but didn't. Again, I am not critical from the sense that there was a deliberate intent to violate the Open Meeting Law. I think it was innocently done. But I do think it would be appropriate that each of the three Councilmembers involved be given an opportunity to explain what occurred and exactly how we got to where we were. With that, my suggestion would be to, perhaps, turn the time over to Mr. Taylor first since he was the one that ultimately made the motion with respect to the Ordinance. I've chided him that since he made the motion he is the culprit. I am not sure that he would belly-up to that label. For that reason, I would suggest that we allow Mr. Taylor, who did participate in the side-bar discussion, to explain how it occurred and what was discussed and the circumstances that followed.

Councilmember Taylor read the following statement:

Thanks everybody for being here tonight. I appreciate the input we heard from many of you two weeks ago and last week. I appreciate this opportunity to express, from my point of view, what occurred and why. I have prepared a written statement. I hate it when people read written statements because it is boring, but I really want to be clear, concise, and complete in my explanation. I am afraid if I try to do it off the cuff, I will get home and say I wish I would have said that and I wish I would have said this. I am going to read most of the comments that I have tonight.

First off, I speak only for myself. I do not presume to speak for the Council as a whole, or for the other Councilmembers. I believe that the public's business ought to be done in the public. The workings of City government should be transparent and the public should be informed about the decisions we make as public servants. Further, I have always welcomed public input and will continue to do so. It is my respect for public input that started the chain of events that we are examining tonight. As you may know, we met in a regularly scheduled City Council Meeting last Thursday evening, for the purpose of receiving additional public input and to vote on the 2012-2013 City budget. It appeared at the City Council Meeting two weeks before, the Council had voted 5-1 to approve the tentative budget which included an increase in property tax to fund essential governmental services. I received significant public input over the weeks leading up to last week's Council Meeting asking me to reconsider my initial vote on the tentative budget, capped by an additional two hours of public testimony protesting the proposed tax increase during last week's public hearing. I was beginning to reconsider my initial vote on the proposed tax increase. Approximately two hours into the meeting, the Mayor called for short recess, which is customary when we have long meetings. At the beginning of the break, I looked down the line at the other Councilmembers and sensed that, perhaps, some of them might also be feeling what I was feeling. Mike and I were sitting next to each other. I value his intelligence and experience on the Council. I looked at him and said something like, "Now what?" meaning how do you proceed with this meeting. We initially decided to leave the busy Council Chambers and visit with each other about how we might proceed. I communicated to him that I was ready to reconsider my position on the tax increase and to change the budget to certify the same dollar amount of property tax that was certified the prior

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three years. I proposed that the budget expenditures stay the same, that we decrease tax revenue to eliminate the proposed tax increase, and cover the reduction by spending down our General Fund and, perhaps, obtain additional efficiencies during the year. About that time, Ida Hardcastle walked in on us and asked what we were thinking. I told her our thoughts and she communicated that she was also having second thoughts about her initial vote on the tentative budget. With that, the three of us returned to the Council Chambers. After the meeting convened, I stumbled through a clumsy motion, which eventually led to a vote to pass the budget with a change to eliminate the proposed increase in property tax. The motion was seconded by Sharon Parry and passed unanimously by the five Councilmembers present. At that point in time, I had no idea I had potentially violated the Open Meeting Law. The reason for meeting with Mike outside Council Chambers was merely to find a quiet place where we could visit with each other briefly without interruption. When the Council Meeting resumed, I publicly made a motion. Each Councilmember had the opportunity to publicly weight in on that motion and a vote was taken in public. I feel at peace with the decision we made. I am glad to live in a City where public input made a difference. We listened and acted on the citizen input we received. Ultimately, we did not increase property taxes. I stand by my vote. I believe I violated the Open Meeting Law. I did so inadvertently. There was no premeditated attempt on my part to hold a secret meeting and to exclude the public from the conversation. In fact, the entire content of our side-bar conversation was relayed to the public shortly after the recess ended and the public meeting was reconvened. I am smarter today than I was last week. If I had it all to do over again, I would avoid the side-bar discussion and engage in the conversation during the open meeting where the public can hear the opinions being expressed. I acknowledge my error publicly and vow to do better. Let me close my remarks tonight by me stating the principals I opened with. I believe the public's business ought to be done in public. The workings of City government should be transparent and the public should be informed about the decisions we make as public servants. I will always welcome public input and will continue to do so. I hope that the citizens of Idaho Falls will accept my sincere apology. I also apologize to my fellow Councilmembers and the Mayor for any embarrassment I may have caused them. I take my role as a public servant seriously and I will continue to serve with dedication and integrity. Thank you.

Councilmember Michael Lehto commented as follows:

I have no prepared remarks, so I do speak from the heart and will make my remarks and so forth. I have a number of thoughts that I would like to convey tonight. They are along the lines of having studied this good book, the Idaho Opening Meeting Law Manual, on Friday, Saturday and Sunday. I have had numerous conversations in the past few days with the legislators who were heavily involved with the passage of this back in 2008-2009, and what the intent was, and some of the trouble I was having reading into this. What I have been able to take away is there is a spirit, there is a trust, there is good faith effort that goes into this Open Meeting Law Manual. And as Mr. Taylor said, I will tell you that on the evening when we went back to talk, it was a rather raucous evening, two hours of testimony and a brief recess, there was

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no deliberation, there was no lobbying for votes. That is the spirit of the law, is that we will stay true to the Open Meeting Law. We went back, as Mr. Taylor said, to discuss process, maybe steps further. I can see that there are some gray areas in here where that can be misconstrued as a violation. I am willing to concede that this evening. So I have said, and I have not been contacted, other members of the Council have been contacted by news media and e-mails have been sent. I think those got a little bit away from us. None of those were sent to me. I will state that I think it is rather presumptuous for the Council and others here tonight that are interested, to assume how I would have voted on this matter. I was still making up my mind. And when we took that recess I had listened to two hours of testimony. I think my mind was made up. At no time did any other Councilmember influence me, lobby for my vote, or ask to deliberate the message. I further believe that we are entering an era now, sadly, of public service that is going to be based on distrust and not the spirit of the law, the intent of the law, which I firmly believe that the Council did not violate. I adhere to the Quorum. I can tell you that I am very attentive to that, not met outside public meetings as a collective body to make decisions with a Quorum present. We typically think of four as a Quorum. I understand where Mr. Storer is coming from. We will have to be vigilant and careful as we move forward, if three elected officials could, perhaps, constitute a Quorum in any one setting. So, sadly, and I reiterate, we are entering a new era, one of distrust. And it will just make it that much more difficult to conduct the public's business. However, I am up to the task and feel like we can do this right moving forward. We can get these meetings set up in an appropriate manner so that there are no questions. It might be a little tougher. I have ideas, and I welcome the opportunity to share those with the public and the Council at another evening. Really, that is all that I have to say.

Councilmember Hardcastle made the following remarks:

I want to preface my brief statement by acknowledging that I made a mistake by talking with the two other Councilmen prior to the vote on the proposed Ordinance setting the budget for 2012-2013. I have learned a valuable lesson. And, of all people, considering my tenure on the Council, I should have been more astute and I take full responsibility for my actions. My brief explanation of my intent was to inform Councilman Taylor, who has spent endless, endless hours presenting and defending the budget. And my admiration and respect for this Councilman needs no elaboration. So I wanted to tell him that I felt that I was going to vote to not extend the taxes. At the August 9 Council Meeting when the budget was presented for publication and a public hearing was allowed, we were reminded by a citizen that this tax increase would be in addition to the recently passed tax increase for the schools which I, by the way, strongly supported. I had forgotten this, and from that point on, I did have misgivings about our adding another increase which I expressed and that is on the record. However, I realized that we cannot keep putting off infrastructure needs without paying more at a later time. So, the logic and reality was present, and my intention at the beginning of the August 23 Council Meeting, was to support the budget as presented and I had indicated that. However, at the August 23 public hearing, I was further convinced that

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we needed to find another way even though many cuts had already been made by the Division Directors. Thus, my words to Mr. Taylor, that my intentions were to back off of my support of the tax increase and that we needed to find other ways to reduce our expenditures. I would also state at this time that I have been on the Council for nineteen years. And I have worked very, very hard on this Council and I have put in endless hours. With all my heart, I have earned the trust of the people of this community. Having said that, this statement represents my reasoning in changing my previous indication of what my vote would be, but was not intended to be an excuse for a violation of the spirit of the law. In addition, there was no reason for the outside discussion off-record that could not have been made and discussed in the public forum. I acknowledge this and I accept complete responsibility for my actions.

Councilmember Parry made the following statement:

I would first like to read a small portion of my statement. Yesterday, I asked our Mayor to see that our newly appointed Assistant City Attorney DeAnn Casperson would be here this evening as our Counsel at my request, a somewhat common occurrence to have our Assistant City Attorney if our City Attorney could not be here. For reasons I do not understand, and that's fine, Ms. Casperson was not able to be here. Because Mr. Storer elected to personally and professionally conflict himself out, he is no longer able to represent me in my capacity as a City Councilmember as to matters regarding the Open Meeting Law, and I would add "only". Thus tonight and since July 12th, I am left without legal representation on the Open Meeting Law. In my capacity as a member of the City Council, Mr. Storer, you chose to no longer represent me or advise me on this very issue in your capacity as City Attorney. You have put yourself in a position, where you essentially can ignore me, and, frankly, I can ignore you and your legal advice on this issue. So, I would ask, given this scenario, that I am left without legal representation tonight on the Open Meeting Law only, I would ask my attorney to make a statement.

Steve Parry, 2705 Homestead Lane, appeared to state that he is the husband of and private attorney for Councilmember Sharon Parry. He stated further, that for the record, his legal representation of Sharon is by him personally, and not by the firm by which he is associated. He made the following statement:

I was born and raised here. Like you, I love Idaho Falls. I know all of you and appreciate your commitment to this great City and our community generally. At one time or another, I have voted for each one of you. I have no doubt that none of you would maliciously try to hurt the City, but you collectively have a serious systemic problem that needs to be addressed. Now, this has taken a number of turns, and so, I think I will get through this quickest if I'll stay with my prepared remarks. But I do want to say that I agree with Mr. Storer that the hearing would not be invalidated. I see no reason why the way the vote occurred would invalidate the hearing. And I especially agree that there was no malice or no ill-intent on anyone's part, and I will confirm that again in a minute.

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During Sharon's nine years on the school board and four and one-half years on the City Council, I have been tempted on numerous occasions to publicly speak out. But as you and all of your spouses know, that is almost always a losing proposition, and it may be so tonight. However, the events of the last few weeks have been so dysfunctional and so over the top inappropriate that I have been compelled to speak. Mr. Lehto mentioned "the spirit of the law", a lot of comment about how we got here tonight and why that occurred last Thursday. I would like to take you back a little further. Mr. Dale Storer, in his capacity as City Attorney, publicly excoriated Sharon Parry in a July 12, 2012 editorial printed in the Post Register. Despite the fact that Mr. Storer was responding to an opinion piece written by Mr. Corey Taule of the Post Register, he chose to direct his venom at Sharon. Mr. Storer's piece was vindictive, completely political in nature, and was full of falsehoods and representations, all in the context of discussing the Open Meeting Law. That Mr. Storer wrote this political piece as the City Attorney, and therefore, on the City's and taxpayers' dime is reprehensible and should be embarrassing to all of you. Neither I nor any other Idaho Falls residents have ever voted for Mr. Storer for Mayor or as a City Councilmember. And none of you should abdicate your duties to him. Quite frankly, I was stunned that Mr. Storer would in the twilight of his long career with the City choose to sully his own reputation with such a vindictive act. Mr. Storer is under contract to provide legal services as the City Attorney and presumably he wrote his own contract. In Mr. Storer's September 7, 2011 contract, it provides that he would provide "advice and consultation with Mayor, City Councilmembers, Division Directors, designated City employees, pertaining to general City matters". Given his personal and political attack on Sharon, Mr. Storer has clearly conflicted himself out from providing legal counsel to Sharon as a City Councilmember as it relates to the Open Meeting issue. This obvious conflict was pointed out to the Mayor weeks ago, with the request that he bring in an independent attorney to advise on Open Meeting Law issues. But, unfortunately, the Mayor refused. And as one of my purposes tonight, is to provide you a differing legal perspective of Open Meeting Laws, with the hope that you might actually consider the possibility that Mr. Storer may be wrong, and may be giving you bad political advice disguised as legal advice. Including the advice given to you in Mr. Storer's four page memo distributed this afternoon, which, like I say with lots of terms, is apparently no longer the position. In retrospect, I would think that each City Councilmember looking back on Mr. Storer's op-ed piece would be wondering just how far you would have to step out of line with Mr. Storer before you were excoriated in public. Each of you have either willingly or unwittingly participated with Mr. Storer in the villainization of divergent opinion. Surely there is a reason to have six City Councilmembers, rather than just one. You all bring something to the table and when you embrace your differing perspectives, it makes you a better Council and you make better decisions. In fact, sometimes, like in recent property tax debates, the long decenter might even know something about the public sentiment that you have missed. During last Thursday's City Council Meeting, you listened to a couple of hours of testimony, and then the Mayor called a recess. During the recess, three of you went into that room, closed the door, and decided how you would vote. That was witnessed by numerous people who observed the significance of that. Because Councilwoman Cornwell was absent, the three of you represented the majority of the existing

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Quorum. You had complete control. When you reconvened the hearing, it was stated immediately that the testimony had been compelling and that you had decided to certify the taxes at last year's level. Whatever discussion you had was not held in public. It was apparent that the decision had been made. Rather than caution you or allow you to cure the Open Meeting breach right then, Mr. Storer sat silent. The mere fact that there was a call for discussion, does not cure the problem, especially when it was made clear to Sharon, prior to taking the stand, that no other outcome would be entertained. Let me diverge a moment to Mr. Storer's memo to you and make four points. He states that there was no preconceived determination by any of the individual Councilmembers involved. After you came out of the meeting, in fact, I think Sharon is the one that brought you out of the meeting, asked you what you were meeting on. She was informed what was going to happen and she raised the question, "What about growth money?" (the new annexation and new construction). She had proposed an alternate budget plan. What about that? The direct answer to her was "No - we are not going to do that." Now I will tell you that my notes here say that I have such confidence in Mr. Taylor and in his integrity and because I know there is no thing, no elected office, for which he would compromise his integrity. And, my notes here say, that I have such confidence in him because that discussion could have been conveyed to Mr. Storer because it did reflect that there was a very clear decision and it would be fruitless to have any further discussion on that particular issue. My confidence in Mr. Taylor has already been confirmed by his statement. It does not surprise me at all because he is in every respect a man of that level of integrity. The second statement there, but the point being that to say that there is no preconceived determination by any of the individual Councilmembers is just simply not the case. And that statement confirmed that. Mr. Storer states, "Mr. Taylor expressed his belief that there was now a consensus among members of the Council..." Again, I would always defer to Mr. Taylor and his statements, but you also have a tape on that. I believe it was very clear that the statement was that testimony was compelling and we have decided. I think that was the language. There is no reference in here to Attorney General Wasden's opinion, in one particular...and I will get to that in a moment, that's my third comment. And then the fourth, Mr. Storer states, "stated more precisely, the question becomes whether or not those three members had authority to make decisions for or recommendations to a public agency regarding any matter." In my opinion, they did not. That evening, there were only five of you here. Three of you had all of the control in the world. That's all it took. How you possibly didn't have authority as the three of you to make that decision is perplexing. He then states, "Idaho Code Section 'this', provides that a Quorum must be present for transaction of business and the question before the Council must be decided by a majority of the members present". Clearly, then the three Councilmembers involved had no authority, they were the majority. The majority of the Quorum was in that meeting. It should be a flashing warning sign to each of you, that even under these circumstances, Mr. Storer is still ... well at the time of this memo, still advised that there was no breach of the law. He has tipped over to the other side. Apparently, and I think he confirmed this, based upon the theory that there was not a Quorum behind those closed doors. On this point, earlier Sharon was cited to Page 8 of the Open Meeting Laws. Question 9, which

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asks, “whether the term meeting includes such things as informal gatherings, briefing sessions, informal discussions”. The answer would appear to support Mr. Storer. The answer is, “As noted above, a meeting is the convening of a governing body to make a decision or deliberate toward a decision. Initially, a Quorum must be present.” Period. That’s the answer. Clearly, there was no Quorum of four behind those closed doors. There was only a majority of the Quorum that was present. Now, with your individual and collective intelligence, I would hope that Mr. Storer’s parsing of the statute would not appeal to you. Apparently, in the end, hasn’t to him either. I can’t imagine that any of you, in deciding to run for public office, said to yourself, “I want to be elected so I can walk the fine line between legal and illegal, so that I can do the public’s business in secret because that is more comfortable, and perhaps even more efficient.” I will grant you that it is more efficient and more comfortable to have your discussions in private to avoid having certain discussions when a reporter is present, when in the long run, these measures are not effective. The ends do not justify the means in this case either. However, for those of you who still like to parse the words and still agree with Mr. Storer’s initial conclusion, we need to read on in the Attorney General’s answer. He cites the case, stating that the law’s intent is “that deliberation as well as action occur openly and publicly. Recognition of deliberation in action is dual components of the collective decision making process brings awareness that the meeting concept cannot be split off and confined to one component only.” “An informal conference or caucus permits crystallization of secret decisions to a point just short of ceremonial acceptance.” I think that hits it on the head. There is rarely any purpose to a non-public pre-meeting conference except to conduct some part of the decisional process behind closed doors. Now, even still, at this point, you may be saying, “Yeah, but the fact was that there wasn’t a Quorum behind the closed doors, but only a majority of the Quorum. Let me read our Attorney General’s conclusion and opinion on Page 10, “The same considerations must be applied with respect to the Idaho Open Meeting Law. Therefore, it is the opinion of the Attorney General that the provisions of the Open Meeting Law must be complied with whenever a quorum of the members of the governing body of a public agency meets in order to decide or deliberate on matters which are within the ambit of official business. Those meetings can be formal, informal, or social. So long as a quorum is present and the intent is to deliberate or make a decision, then the meeting must be open.” And then the next paragraph – which it astounds me does not appear here, says, “The requirement that the Open Meeting Law be complied with whenever a quorum of a governing body meets to deliberate or to make a decision should not be evaded by holding smaller meetings with less than a quorum present or by having a go-between contact each of the governing body members to ascertain his/her sentiment.” It does not take an attorney or legal education to read and understand the application of this paragraph to the events of last Thursday night. Hence, all that is left of Mr. Storer’s legal analysis would be to say that the opinion of the Attorney General is wrong. And that may, in fact, be Mr. Storer’s position; although again, that has been revised. Otherwise, there is no explanation why he would even suggest to any of you that there might not have been a breach. By making that suggestion to you, he continues the turmoil and the disputations between you about how you should be proceeding. The key point is that even with this

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clear breach, it is more important to Mr. Storer to defend his position than to give you good advice. If you make a ... To the extent that you make a pro forma apology to satisfy the newspaper or worse, don't make any apology at all, then you will leave this meeting convinced as ever that Mr. Storer is right and you did nothing wrong. And you may even think that Mr. Storer was right in excoriating Sharon in public over her desires to have information and more open meetings. Such an attitude created and fostered by Mr. Storer will do no good. Instead, you need to honestly own up to the mistake and then change the tone and attitude of the Council. I admire Mr. Taylor for his commitment to do just that. It was apparent that he has been forthright and honest from the beginning with the public and clearly desired to be in compliance with the law. I remain concerned, however, that some of you will remain disgruntled and will cling to Mr. Storer's intents to circumvent the Open Meeting Laws by focusing on isolated language taken out of context, rather than the clear spirit of the law and our Attorney General's opinion. You have a choice to make and I encourage you to revisit your aspirations when you first decided to run for City Council. Because of her convergent opinion, Sharon has been the focus of both the Open Meeting issue and the recent property tax issue. And I think you must all admit that it has been brutal at times, due primarily to Mr. Storer's vindictive actions. I hear Sharon speak to the residents of Idaho Falls all the time. And even when she disagrees with you, she has always, until very recently, lauded your efforts and expressed appreciation for what you bring to the Council. You should show her the same respect, whether or not you agree. For example, those who have previously and recently done so, must stop conducting illegal phone polls of Councilmembers to circumvent discussion and official votes. Those phone polls are absolutely as much in violation as that type of meeting. That's the go between - must stop breaching Executive Sessions. In his editorial, Mr. Storer intentionally sought to confuse you and the public by combining the Opening Meeting Law issue with an issue arising from breach of an Executive Session. If you want more insight as to why Sharon went to the County Attorney, then ask her. It may interest you to know that several years ago, I was approached in person by someone who had clear and compelling information on a breach of an Executive Session made directly to the person to whom the City was preparing to transact business. Presumably, this breach was for the purpose of somehow intimidating Sharon, or otherwise belittling her, or otherwise changing her position. Sharon bore that. But the circumstance of the most recent breach made it impossible for Sharon to go to Mr. Storer. And he clearly was retaliating in his op-ed piece. If, as Councilmembers, you question her motives, then at least first ask her before judging her. If you would like me to detail for you the false statements and misrepresentations made by Mr. Storer in his opinion piece, then I would be happy to share those details. They should be apparent to each of you. My final point comes as Sharon's husband. When Mr. Storer chose, as City Attorney, to jump into the political fray, I truly expected that those of you with integrity on the Council, would surely thereafter either reprimand Mr. Storer or at least release statements that his comments were not accurate and were inappropriately made as the City Attorney. Like many of you, Sharon has spent thousands of hours and years of her life volunteering in the community for no pay and now for the small amount that you each receive. Her service has never been motivated by money, which makes it much easier for her to be

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bold and straight forward, much to the dismay of some. On the other hand, the City has made Mr. Storer wealthy. Somehow he feels that he has a license to castigate those whom he has a legal and contractual obligation to advise. I don't care how much I might disagree with a colleague, had I been in your shoes, I would have been spoken out. Mr. Storer is castigating Sharon for seeking information and trying to have open meetings was reprehensible and should have been rebutted on that point alone. My understanding is that you are migrating towards Sharon's desired schedule anyway, which hopefully that will actually occur, so that her plot to "disenfranchise voters" as described by Mr. Storer, must not have been nearly as sinister as he pretended. I have yet to ask anyone who understands why Mr. Storer did what he did or why it was tolerated by the Council. I was personally disappointed, but I recognize that Mr. Storer wrote the piece with the Mayor's pre-knowledge and, presumably, therefore, with his consent, although he may not have known of the particulars and the personal nature of the attack. But as such, this editorial was clearly politics. However, I do appreciate those of you who I know have privately addressed Mr. Storer on the issue and appreciate your integrity. When I, as an attorney, take on a client, I lose the right to say whatever I please publicly about that client or that client's agents. You should take seriously what Mr. Storer did and how he did it because it was pure politics. So as to not be misunderstood, Sharon and I both understand the phrase that "if you can't stand the heat get out the kitchen". And those who know Sharon know that she is never afraid to take on a political challenge, but it should still be a fair fight. If the Mayor or City Councilmembers want to debate an issue with Sharon, then have the courage to do so in a public meeting and not through the City Attorney as a surrogate. It is apparent to me that the reason you so casually breached the Open Meeting Law last Thursday, was because of the lack of training and the environment created by Mr. Storer which fosters this secrecy. This is a systemic problem and you need to fix it. You should at a minimum – at a minimum – it's baffling why you haven't to this point – seek a second opinion on these issues as Mr. Storer is now so vested in his past actions and statements that he cannot possibly give you independent advice. Thank you.

Councilmember Parry made the following comments:

Mr. Mayor, I am still on my statement. I just wonder given that this meeting is just about an hour now, will there be another forum that we speak about the Open Meeting Law, given that this is the very nature and the reason why we are here tonight. I noticed for example – or - is this it tonight, or will we have a future forum? I noticed some distinct raising of eyebrows by you twice and some note taking once by Mrs. Hardcastle. Do you want to go toe-to-toe now or do you want to ... and discuss these things that you obviously take issue with, in particular, how you refused to find separate counsel for me given the letter that I delivered on July 26th to you or that who would be excoriated next on the Council potentially. And then, Mrs. Hardcastle, regarding phone polls. I am just trying to be very honest and open with you if you have concerns about these particular things. Is this for a future forum? Will we be discussing these things in open and public or do we need to discuss these now.

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Mayor Fuhriman stated as follows:

I think that tonight is not the night to do this. I would suggest that we reconvene, maybe through a Work Session, with the Council themselves. But we need to probably think about this before making any rash decisions. Tonight has been a fairly emotional evening, so let's have a moment in time in between so we can gather then.

Councilmember Parry stated:

If I could have a date certain, then I will not hesitate at all on that. Our next Work Session is scheduled is scheduled for the 7th, I'm thinking ... the 11th.

Mayor Fuhriman stated:

I would have to look into it. What I will do is I will have my Assistant contact the other Councilmembers and we can go ahead and make sure that everyone can be there. Fair enough?

Councilmember Parry stated:

Then I will yield the floor, if you will. And any further comments I can certainly reserve until then. Thanks.

Councilmember Lehto commented:

I would support Mrs. Parry. I think I have asked for another opinion on this matter. I am horribly conflicted reading the law. I am very apologetic that I missed the Post Register's training in early August on this. There are questions that need to be asked and I think that we probably need to have another party at the table that we can ask those questions of. I think ... I stated that I concede that I can understand.

Dale Storer stated:

Perhaps if I may offer a suggestion here. I did visit with the Attorney General on this matter. One of the suggestions that he had, and offer that he made, was to have provided additional training with respect to the Open Meeting. And, certainly, I think everyone could benefit from that. And I might suggest that would be an opportunity that the Council may wish to take.

Councilmember Taylor moved, and Councilmember Lehto, that Council acknowledge that the Open Meeting Law was broken last Thursday Night, when Councilmember Taylor, Councilmember Lehto, and Councilmember Hardcastle had a side-bar meeting in the adjacent room and publicly acknowledge that was a violation. Roll call as follows:

Aye:	Councilmember Hally
	Councilmember Taylor
	Councilmember Lehto
	Councilmember Cornwell

Councilmember Hardcastle
Councilmember Parry

Nay: None

Motion Carried.

City Attorney stated that the Statute also requires that there be a declaration of an intent to cure the violation. He gathered that was Mr. Taylor's intent was to cure the violation by his motion. Councilmember Taylor stated that to be correct.

Councilmember Taylor explained that the Appropriation Ordinance No. 2909 is being brought back before the City Council at this time. The Ordinance being presented this evening is different than the original proposed Ordinance that was voted on at the August 23, 2012 Meeting. The Ordinance being considered this evening holds property taxes flat, reduces those tax revenues out of the budget, and the reduction would be covered by spending down funds and/or finding further efficiencies in the operations of the City.

A brief discussion was held regarding whether there would be public comment allowed.

Councilmember Parry stated that the City Council often takes comment, by saying, "This is not a public hearing. Is there anyone here who would like to address the Council?"

Councilmember Lehto stated that, sadly, the Council will never do that again while he is a City Councilmember. That will not be a properly noticed meeting. He expressed that he was afraid that someone will come before the City Council and claim that the Council took public testimony and that they were disenfranchised by not having the opportunity to see that in the newspaper or on the website, knowing that they could have testified had they attended. The City will properly notice all public meetings.

Councilmember Parry stated that she could see Councilmember Lehto's point and see that there is some justification for that. Also, on the Regular City Council Meeting Agendas, there is an area for recognition of citizens from the floor. Councilmember Parry stated that she assumes that this is another item that will be discussed under the Open Meeting Law discussion.

Councilmember Lehto stated that those will be questions for members of the Attorney General's Office when the City has a Work Session on this issue. It would be his hope to get some resolution and clear guidance as to how to proceed.

At the request of Councilmember Taylor, the Deputy City Clerk read the following Ordinance by title only:

ORDINANCE NO. 2909

THE ANNUAL APPROPRIATION ORDINANCE OF
THE CITY OF IDAHO FALLS, IDAHO, FOR THE
PERIOD COMMENCING OCTOBER 1, 2012 AND
ENDING SEPTEMBER 30, 2013, APPROPRIATING
AND APPORTIONING THE MONIES OF SAID CITY
TO AND AMONG THE SEVERAL FUNDS OF SAID
CITY AND DESIGNATING THE PURPOSE FOR
WHICH SAID MONIES MAY BE EXPENDED;
SPECIFYING THE AMOUNT OF MONEY PAID BY
PROPERTY TAX TO BE APPROPRIATED TO SAID
FUNDS; PROVIDING WHEN THE ORDINANCE
SHALL BECOME EFFECTIVE.

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It was moved by Councilmember Taylor, seconded by Councilmember Parry, to approve the 2012-2013 Fiscal Year Budget in the amount of \$185,586,062.00 and, further, that the provisions of Idaho Code Section 50-902 requiring all Ordinances to be read by title, and once in full, on three separate dates be dispensed with, the Ordinance be passed on all three readings, and, further, give authorization for the Mayor and City Clerk to execute the necessary documents.

Councilmember Parry stated that the City Council is at a point that the budget process needs to be modified by the City Council. First, we need to change the calendar. Second, we need to give guidance at the very beginning of the budget. The City Council needs to own the budget process from the beginning as a Council. In order for this year's budget to work, the Council needs to go back to the drawing board. This will be a very busy couple of months. Even with employee benefits, the City Council needs to restructure this budget. This needs to be done quickly so that staff and employees can go about their business in an efficient way. This responsibility needs to stay with the Mayor and City Council. Councilmember Parry commented that, perhaps, she is too much of a control freak, but she does not believe that the Council should abdicate their responsibility that they were elected for to a committee of unelected, appointed individuals.

Roll call as follows:

Aye: Councilmember Taylor
 Councilmember Hally
 Councilmember Parry
 Councilmember Lehto
 Councilmember Cornwell
 Councilmember Hardcastle

Nay: None

Motion Carried.

There being no further business, it was moved by Councilmember Taylor, seconded by Councilmember Cornwell, that the meeting adjourn at 8:47 p.m.

CITY CLERK

MAYOR
